



EXPEDITED SPCC SETTLEMENT AGREEMENT  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7, 901 N. 5<sup>th</sup> ST., KANSAS CITY, KANSAS 66101

03 DEC 12 AM 9:17

Facility Name: Macklin Unit Tank Battery

Location: Hitchcock County, NE

Owner/Operator: BEREXCO Inc.  
(Respondent)

ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

DOCKET NO: CWA-07-2003-0263

On July 30, 2002, an authorized representative of the United States Environmental Protection Agency (EPA) conducted an inspection to determine compliance with the Oil Pollution Prevention (SPCC) regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act (33 U.S.C. § 1321(j)) (the Act), and found that Respondent had violated regulations implementing Section 311(j) of the Act by failing to comply with the regulations as noted on the attached Spill Prevention Control and Countermeasure Inspection Findings, Alleged Violations, and Proposed Penalty Form (Form), which is hereby incorporated by reference.

If Respondent does not sign and return this Expedited Settlement as presented within 30 days of the date of its receipt, the proposed Expedited Settlement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Form.

This proceeding and the Expedited Settlement are under the authority vested in the Administrator of EPA by Section 311(b) (6) (B) (i) of the Act, 33 U.S.C. § 1321(b) (6) (B) (i), as amended by the Oil Pollution Act of 1990, and 40 CFR §§ 22.13(b) and 22.18(b), published at 64 Fed. Reg. 40137 on July 23, 1999. The parties enter into this Expedited Settlement in order to settle the civil violations described in the Form for a penalty of \$ 550.00. This settlement is subject to the following terms and conditions:

EPA finds that Respondent is subject to the SPCC regulations, which are published at 40 CFR Part 112, and has violated the regulations as further described in the Form. Respondent admits that he/she is subject to 40 CFR Part 112 and that EPA has jurisdiction over Respondent and Respondent's conduct as described in the Form. Respondent does not contest the Inspection Findings, and waives any objections it may have to EPA's jurisdiction. Respondent consents to the assessment of the penalty stated above.

Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the violations have been corrected and Respondent has sent a certified check in the amount of \$ 550.00 payable to the "Oil Spill Liability Trust Fund," to:

"Regional Hearing Clerk, Office of Regional Counsel,  
U.S. Environmental Protection Agency, 901 N. 5<sup>th</sup>  
Street, Kansas City, Kansas 66101".

Respondent has noted on the penalty payment check the docket number CWA-07-2003-0263 of this case.

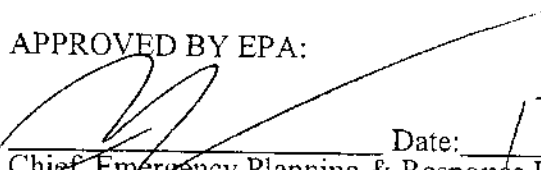
(Do Not Make Check Out to Regional Hearing Clerk)

This Expedited Settlement resolves Respondent's liability for Federal civil penalties for the violations of the SPCC regulations described in the Form. However, EPA does not waive any rights to take any enforcement action for any other past, present, or future violations by Respondent of the SPCC regulations or of any other federal statute or regulations. By its first signature, EPA ratifies the Inspection Findings and Alleged Violations set forth in the Form.

Upon signing and returning this Expedited Settlement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 311 of the Act, and consents to EPA's approval of the Expedited Settlement without further notice.

This Expedited Settlement is binding on the parties signing below, and is effective upon the Regional Judicial Officer's signature.

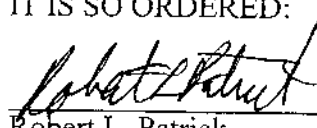
APPROVED BY EPA:

  
Date: 12/8/03  
Chief, Emergency Planning & Response Branch,  
Superfund, Division

APPROVED BY RESPONDENT:

Name (print): ADAM BEREN  
Title (print): President  
Signature: Adam E Beren

IT IS SO ORDERED:

  
Robert L. Patrick  
Regional Judicial Officer

Date: Dec. 11, 2003

INSTRUCTIONS ON REVERSE

## INSTRUCTIONS

The United States Environmental Protection Agency ("EPA") has authority under Section 311 of the Clean Water Act to pursue civil penalties for violations of the Spill Prevention, Control and Countermeasures ("SPCC") regulations. However, EPA encourages the expedited settlement of easily verifiable violations of SPCC requirements, such as the violations cited in this Expedited Settlement Agreement.

You may resolve the cited violations quickly by signing and returning the Expedited Settlement Agreement (Agreement) and paying the penalty amount within 30 days of your receipt of the Agreement. Failure to return the Agreement within the approved time does not relieve you of the responsibility to comply fully with the regulations, including correcting the violations that have been specifically identified by the inspector. If you decide not to sign and return the Agreement and not pay the penalty, EPA can pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to \$11,000 per violation up to a maximum penalty of \$27,500.

You are required in the Agreement to certify that you have corrected the violations and paid the penalty amount. The payment for the penalty amount must be in the form of a certified check payable to the "Oil Spill Liability Trust Fund," with the Docket Number of the Expedited Settlement Agreement on the check. The Docket Number is located at the top of the right column of the Agreement.

The Agreement and Payment of the penalty amount shall be sent via certified mail to:

Regional Hearing Clerk  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101


By the terms of the Agreement, you waive your opportunity for a hearing pursuant to Section 311 of the Clean Water Act. EPA will treat any response to the proposed Agreement, other than acceptance of the settlement offer, as an indication that you are not interested in pursuing this expedited settlement procedure.

If you have any questions, you may contact the EPA Region 7 SPCC Compliance Coordinator at (913) 551-7251.

07/21/03

## Spill Prevention Control and Countermeasure Inspection Findings, Alleged Violations, and Proposed Penalty Form

(Note: Do not use this form if there is no secondary containment)  
These Findings, Alleged Violations and Penalties are issued by EPA Region 7 under the authority vested in the Administrator of EPA by Section 311(b)(6)(B)(i) of the Clean Water Act, as amended by the Oil Pollution Act of 1990

Company Name <b>BEREXCO Inc.</b>	Docket Number: CWA <b>7 - 2 0 0 3 - 0 2 6 3</b>	
Lease Name <b>Macklin Unit Tank Battery, Trenton, NE</b>	Inspection Date <b>July 30, 2002</b>	
Company Address <b>100 No. Broadway, Suite 970</b>	Inspection Number <b>F Y - I N S P - 0 2 - 0</b>	
City: <b>Wichita</b>	Inspector's Name: <b>Edwin McGlasson</b>	
State: <b>KS</b> Zip Code: <b>69044</b>	EPA Approving Official: <b>Robert W. Jackson</b>	
Contact: <b>Mr. Bill Marks, Foreman</b>	Enforcement Contacts: <b>Bob Webber Phone Number: (913)551-7251</b> <b>Alan Hancock Phone Number: (913)551-7647</b>	

### Summary of Findings

#### OIL PRODUCTION FACILITIES (ONSHORE)

**GENERAL TOPICS: 112.3(d), (e); 112.5(a), (b), (c); 112.7 (b), (c), (d)**

(When the SPCC Plan review penalty exceeds \$1,000.00 enter only the maximum allowable of \$1,000.00 dollars.)

<input type="checkbox"/> No Spill Prevention Control and Countermeasure Plan .....	\$ 1,000.00
<input type="checkbox"/> Plan not certified by a professional engineer .....	300.00
<input type="checkbox"/> Plan not maintained on site (applies if facility is manned at least eight (8) hours per day) ....	100.00
<input checked="" type="checkbox"/> Plan not available for review .....	100.00
<input checked="" type="checkbox"/> No evidence of three year review of plan by owner/operator .....	50.00
<input type="checkbox"/> No plan amendment(s) if the facility has had a change in: design, construction, operation, or maintenance which affects the facility's discharge potential .....	50.00
<input type="checkbox"/> Amendment(s) not certified by a professional engineer .....	100.00
<input checked="" type="checkbox"/> Inadequate or no prediction of equipment failure which could result in discharges .....	100.00
<input checked="" type="checkbox"/> Plan does not discuss appropriate containment/diversionary structures/equipment .....	100.00
Installation of appropriate containment/diversionary structures is impractical	
<input type="checkbox"/> No contingency plan .....	100.00
<input type="checkbox"/> No written commitment of manpower, equipment, and materials .....	100.00

### Written Procedures and Inspection Records 112.7(e)(8)

<input type="checkbox"/>	Inspections required by 40 CFR Part 112 are not in accordance with written procedures developed for the facility .....	50.00
<input type="checkbox"/>	Written procedures and a record of inspections are not signed by facility supervisor .....	50.00
<input checked="" type="checkbox"/>	Written procedures and a record of inspections are not made part of the plan .....	50.00
<input type="checkbox"/>	Written procedures and a record of inspections are not maintained for three years .....	50.00

### Personnel Training and Spill Prevention Procedures 112.7(e)(10)

<input checked="" type="checkbox"/>	No training on the operation and maintenance of equipment to prevent discharges .....	50.00
<input type="checkbox"/>	No training on the applicable laws, rules, and regulations .....	50.00
<input type="checkbox"/>	No designated person responsible for spill prevention .....	50.00
<input type="checkbox"/>	Spill prevention briefings are not scheduled and conducted periodically .....	50.00
<input checked="" type="checkbox"/>	Plan has inadequate or no discussion of personnel training and spill prevention procedures .....	50.00

### Oil Production Facilities, Onshore 112.7(e)(5)

<input type="checkbox"/>	Accumulated oil in the secondary containment system(s) is not picked up and returned to storage or properly disposed of in accordance with the regulations .....	200.00
<input type="checkbox"/>	Field drainage ditches, road ditches, and oil traps, sumps, or skimmers are not regularly inspected for oil, and/or oil is not removed .....	200.00
<b>Drainage from diked areas:</b>		
<input type="checkbox"/>	Drains for the secondary containment systems at the tank battery(ies) and central treatment stations are not closed and sealed at all times except when rainwater is being drained .....	300.00
<input type="checkbox"/>	Prior to drainage, rainwater runoff is not inspected to ensure compliance with water quality standards and could cause a harmful discharge .....	300.00
<input type="checkbox"/>	Bypass valve is not opened and resealed under responsible supervision .....	100.00
<input type="checkbox"/>	Adequate records of drainage events are not maintained .....	50.00
<b>For Aboveground Storage Tanks:</b>		
<input type="checkbox"/>	Tank material and construction are not compatible with the oil stored and the conditions of storage .....	300.00
<input type="checkbox"/>	Secondary containment appears to be grossly inadequate for tanks and central treating installations .....	500.00
<input type="checkbox"/>	Materials of construction are not sufficiently impervious .....	250.00
<input type="checkbox"/>	Excessive vegetation which affects the integrity of the containment system .....	100.00
<input type="checkbox"/>	Walls of containment system are slightly eroded or have low areas .....	200.00

<input type="checkbox"/>	Drainage from non-diked areas does not flow to a catchment basin or holding pond .....	500.00
<input type="checkbox"/>	Visual tank inspections are not conducted periodically by appropriate personnel and/or inspections do not include tank foundation and supports .....	300.00
<input type="checkbox"/>	Tank battery installations are not "fail-safe" engineered because <u>none</u> of the following are present .....	300.00
	(1) Adequate tank capacity to prevent tank overfill;	
	(2) Overflow equalizing lines between the tanks;	
	(3) Vacuum protection to prevent tank collapse;	
	(4) High level alarms to generate and transmit an alarm signal where facilities are part of a computer control system.	

#### Facility Transfer Operations

<input type="checkbox"/>	Above ground valves and pipelines are not examined periodically on a scheduled basis for general condition (includes items, such as: flange joints, valve glands and bodies, drip pans, pipeline supports, bleeder and gauge valves, polish rods/stuffing box.) .....	300.00
<input type="checkbox"/>	Brine disposal facilities are not examined often .....	300.00
<input type="checkbox"/>	Inadequate or no flowline maintenance program (includes: examination, corrosion protection and, flowline replacement) .....	300.00
<input checked="" type="checkbox"/>	Plan has inadequate or no discussion of oil production facilities .....	50.00

**TOTAL**    \$ 550.00

#### Additional violations which must be corrected:

1. Maps, sketches, or drawings should show locations of storage tanks, loading/unloading areas, flow lines to wells and direction and route of facility drainage flow to the waterway;
2. A detailed discussion of Loading/Unloading operations should be included in the SPCC plan;

In addition, there was no containment for the loading/unloading area of the facility as required by 40 CFR, Part 112.7 (e)(4). If a spill to a waterway were to occur from the truck during loading/unloading, the owner/operator could be held responsible for the cleanup and for any penalties assessed as a result of the spill and/or lack of containment.

IN THE MATTER OF Macklin Unit Tank Battery, Respondent  
Docket No. CWA-07-2003-0263

CERTIFICATE OF SERVICE

I certify that the foregoing Expedited SPCC Settlement Agreement was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Kristina Kemp  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Adam Beren, President  
Macklin Unit Tank Battery  
100 No. Broadway, Suite 970  
Wichita, Kansas 69044

US. Coast Guard  
Finance Center (OGR)  
1430A Kristina Way  
Chesapeake, VA 23326

Dated: 12/12/03



Kathy Robinson  
Regional Hearing Clerk